

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0335P  
Gross and Adjusted Gross Income Tax  
Calendar Years 1997, 1998, and 1999**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited for 1997, 1998, and 1999 and was disallowed NOL carryforward. The NOL was carried backward and resulted in a tax adjustment.

The department disallowed a loss carryforward based upon an Illinois court case that was appealed and decided against the taxpayer in 1997. A prior Indiana audit of the taxpayer's income tax for the years April 1994, April 1995, April 1996, and December 1996 resulted in assessments from the disallowance of Net Operating Loss carryforwards for those tax years. Taxpayer protested these findings and was denied in a Letter of Findings completed on August 11, 2000.

The Department notes that the taxpayer protested similar assessments proposed by the Illinois Department of Revenue. The court's opinion in that case clearly disallowed that taxpayer a loss carryforward. This was the basis that the department assessed a penalty.

Taxpayer filed a penalty protest letter dated October 31, 2001.

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**DISCUSSION**

Taxpayer protests the penalty assessed and states that it received its Letter of Findings in August,

2000, and given that the 1997 and 1998 corporate Income Tax returns were filed under the premise that it would be allowed the NOL deduction for these tax years. Taxpayer asks that the Department consider these facts and circumstances in its request for abatement of the penalty.

Taxpayer had a protest for the Net Operating Loss deduction issue for 1994 through 1996 that was not completed by the department until August 11, 2000. The current audit, relating to the same issue and Letter of Findings, was assigned the auditor in July 2000 and on September 9, 2000, the auditor made an appointment with the taxpayer for October 31, 2000. Taxpayer was not aware before the current audit began that it was not allowed to carry losses forward and the taxpayer did not amend the returns because the years were being audited.

### **FINDING**

Taxpayer's protest is sustained.